

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1075 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No.

-----  
MINAKSHI BUILDERS

Versus

SURESHCHANDRA ALIAS SURENDRA CGAJJAR

-----  
Appearance:

MR RN SHAH for Petitioners

Mr.P.B Majmudar for Respondent No. 1

-----  
CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/08/98

ORAL JUDGEMENT

This revision has been filed under section 115 of the Code of Civil Procedure against the order of the Trial Court rejecting the application of the defendant revisionist under section 8 of the Arbitration and Conciliation Act,1996.

Learned Counsel for the revisionist at the

admission stage contended that the Trial Court committed jurisdictional error in following the decision of this Court in M.S.Patel Vs. Swashraya Construction, 23(1) GLR P.312 and that the Trial Court further committed jurisdictional error in not staying the suit under the aforesaid section.

Brief facts are that it was a case of partnership at will which according to the plaintiff respondent was dissolved. Admittedly, no notice of dissolution of partnership was given by the plaintiff. However, on the basis of section 43 of the Arbitration Act, and the pronouncement of this Court in M.S.Patel's case (Supra) it was admitted that service of summons on the defendant in a case of partnership at will amounts to dissolution of partnership. Reliefs sought in the plaint were for declaration, permanent injunction and rendition of account. Relief of declaration was that the partnership at will be declared to have been dissolved. Permanent injunction was sought, that the defendants No.1 and 2 who were carrying business in the partnership premises in their individual capacity had no right to do so hence he restrained accordingly. Rendition of account was also sought from the defendants. In the application under section 8 of the Arbitration and Conciliation Act, alleging readiness and willingness to refer the dispute to the Arbitrator in terms of clause 16 of the Partnership Deed dated 1.4.1989 between the partners, it was requested by the revisionist before the Trial Court that the matter be referred to the Arbitrator and proceedings in the suit be stayed. Learned Trial Court placing reliance upon the case of M.S.Patel (Supra) observed that the application was liable to be rejected in as much as in case of partnership at will no such reference can be made to the Arbitrator after dissolution of such partnership.

Learned Counsel for the revisionist has tried to distinguish the pronouncement in M.S.Patel's case on two grounds. First was that in that case two attempts were made for settlement in a matter which was already referred to the Arbitrator for reconciliation and even after long interval of two years the matter could not be settled before the Arbitrator. According to the learned Counsel for the revisionist in this case no such attempt was made and as such reference of dispute to the Arbitrator could not be refused. Second distinction, according to Shri R.N.Shah, is that it was a case under section 34 of the old Arbitration Act and as such

principles of law laid down in this case cannot hold good in a case under section 8 of the Arbitration and Conciliation Act,1996. I am unable to accept either of these two distinctions.

It was next argued that another distinctive feature is that in the case of M.S.Patel (Supra) in the application no where it was mentioned that the defendant was ready and willing to refer the dispute to the Arbitrator whereas in this case before me specific averment to this effect has been made in the application. It is only on these distinguishing features the case of M.S.Patel (Supra) cannot be ignored. Ratio of a case has to be determined with reference to the facts and decision thereon and not in isolation. The facts in M.S.Patel's case were also identical. Herein also, it was a case of partnership at will which was dissolved. The relief sought in the plaint was rendition of account. In the case before me also decree for rendition of account has been sought. There is additional relief in the instant case for permanent injunction. In M.S.Patel's case (Supra) an identical case, deed of partnership bearing clause (16) on Arbitration agreement was considered. It was laid down as under :

"It, therefore, necessarily follows that Clause (16) of the partnership deed has application only during the subsistence of the partnership and it does not have the effect of taking away the right conferred on a partner by Sec.43 of the Partnership Act to have the partnership dissolved by notice if the partnership is a partnership at will. On this interpretation as regards the scope of Clause (16) of the partnership deed, it must be held that the learned trial Judge was not right in staying further proceedings in the suit order sec.34 of the Arbitration Act."

From the above observation it is clear that the ratio of M.S.Patel's case (supra) is that in case of partnership at will if there is any clause in the deed of partnership for referring the dispute relating to the business of partnership to an Arbitrator such clause will have force only till the partnership subsists. If partnership itself stood dissolved under section 43 of the Partnership Act, and the said section confers a definite right to dissolve such partnership, none can restrict the right of a partner to file suit in a Court of law. In effect, the ratio of this case is that clause of arbitration in the deed of partnership will continue

to remain in force so long as partnership subsists. The partnership did not subsist, as it stood dissolved on receipt of summons by the defendant revisionist. Hence in the case before me clause 16 of the partnership deed became non-existent. Consequently, there was no occasion for the Trial Court to refer the dispute to the Arbitrator.

Further, ratio emerging from M.S.Patel's case (supra) is that the Court below in such circumstances should not have stayed the suit under section 34 of the old Arbitration Act. Same principle will also hold good even for section 8 of the new Arbitration Act.

The order under revision therefore, does not suffer from any jurisdictional error. Revision is accordingly dismissed. No order as to costs.

Sd/-

(D.C.Srivastava, J.)

m.m.bhatt